

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS**

JOSIE HATUEY,

Plaintiff,

V.

IC SYSTEM,

Defendant.

Case No.:

COMPLAINT AND DEMAND FOR JURY TRIAL

(Unlawful Debt Collections Practices)

COMPLAINT

JOSIE HATUEY (“Plaintiff”), by and through his attorneys, Kimmel & Silverman, P.C., alleges the following against IC SYSTEM (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on Defendant's repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA") and the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* ("TCPA").

JURISDICTION AND VENUE

2. This Court’s jurisdiction arises under 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. §

1 1331, which grants this Court original jurisdiction of all civil actions arising under
2 the laws of the United States.

3 3. Defendant regularly conducts business in the Commonwealth of
4 Massachusetts, therefore personal jurisdiction is established.
5

6 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

7 **PARTIES**

8 5. Plaintiff is a natural person residing in Roxbury, Massachusetts
9 02119.
10

11 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
12 1692a(3).

13 7. In the alternative, Plaintiff is a person granted a cause of action
14 under the FDCPA. See §1692 (k)(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS
15 18687 (E.D. Pa. Dec. 22, 2000).
16

17 8. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).
18 Defendant is a corporation with its principal place of business located at 444
19 Highway 96 East, St. Paul, Minnesota 55164.
20

21 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C.
22 §1692 a(6), and sought to collect a debt from Plaintiff.

23 10. Defendant is a “person” as that term is defined by 47 U.S.C.
24 §153(39).
25

1 11. Defendant acted through its agents, employees, officers, members,
2 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
3 representatives, and insurers.

4 **FACTUAL ALLEGATIONS**

5 12. Plaintiff has a cellular telephone that he has had for at least one year.

6 13. Plaintiff has only used this phone as a cellular telephone.

7 14. By way of background, beginning in or around September 2015,
8 Defendant began to call Plaintiff repeatedly on his cellular telephone.
9

10 15. At this time Plaintiff had just obtained a new cellular telephone.

11 16. Defendant has been contacting Plaintiff regarding an unknown third
12 party named Brian O'Neill.
13

14 17. Defendant's collectors called Plaintiff from telephone numbers
15 including, but not limited to: (603) 414-1924. The undersigned has confirmed that
16 this number belongs to Defendant.
17

18 18. Shortly after these repeated calls began, Plaintiff spoke to Defendant
19 and informed Defendant they were calling a wrong number and requested that
20 their calls stop immediately.
21

22 19. Defendant heard and acknowledged Plaintiff's request to stop calling
23 by responding that they would take his phone number off their list.
24
25

1 20. However, Defendant ignored this request and calls continued through
2 December 2016.

3 21. Specifically, between December 2015 and December 2016, Plaintiff
4 received repeated unwanted and harassing calls from Defendant for a third party.
5

6 22. Once Defendant knew its calls were unwanted, there was no purpose
7 for these continued calls other than harassment.

8 23. During this time, Defendant placed calls to Plaintiff using an
9 automated telephone dialing system and/or pre-recorded voice.
10

11 24. Plaintiff knew Defendant was using an automated telephone dialing
12 system and/or pre-recorded voice because calls would begin with a pre-recorded
13 voice or recording before he would be transferred to speak to one of Defendant's
14 collectors.
15

16 25. Since these calls were annoying and aggravating for Plaintiff, he took
17 measures to block Defendant's phone number by downloading a blocking
18 application to his cellular telephone after his request to stop calling was ignored
19 by Defendant.
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COUNT I
DEFENDANT VIOLATED §§ 1692d and d(5) OF THE FDCPA

26. A debt collector violates §1692d by engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

27. A debt collector violates §1692d(5) by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

28. Defendant violated these sections when it placed repeated and continuous harassing telephone calls to Plaintiff between December 2015 and the December 2016 knowing these calls were unwanted.

COUNT II
DEFENDANT VIOLATED THE TCPA

29. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.

30. Defendant initiated automated calls to Plaintiff using an automatic telephone dialing system.

31. Defendant's calls to Plaintiff were not made for emergency purposes as they were attempting to contact an unknown third party.

1 32. Defendant's calls to Plaintiff were not made with Plaintiff's prior
2 express consent.

3 33. Defendant's acts as described above were done with malicious,
4 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
5 under the law and with the purpose of harassing Plaintiff.
6

7 34. The acts and/or omissions of Defendant were done unfairly,
8 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
9 lawful right, legal defense, legal justification or legal excuse.
10

11 35. As a result of the above violations of the TCPA, Plaintiff has
12 suffered the losses and damages as set forth above entitling Plaintiff to an award
13 of statutory, actual and treble damages.
14

15
16 WHEREFORE, Plaintiff, JOSIE HATUEY, respectfully prays for judgment
17 as follows:

18 a. All actual damages suffered pursuant to 15 U.S.C.
19 §1692k(a)(1);
20

21 b. Statutory damages of \$1,000.00 for the violation of the
22 FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
23

24 c. All reasonable attorneys' fees, witness fees, court costs and
25 other litigation costs, pursuant to 15 U.S.C. § 1693k(a)(3);

1 d. All actual damages suffered pursuant to 47 U.S.C. §
2 227(b)(3)(A);

3 e. Statutory damages of \$500.00 per violative telephone call
4 pursuant to 47 U.S.C. § 227(b)(3)(B);

5 f. Treble damages of \$1,500.00 per violative telephone call
6 pursuant to 47 U.S.C. §227(b)(3);

7 g. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);

8 h. Any other relief deemed fair and proper by this Honorable
9 Court.
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11

12 **DEMAND FOR JURY TRIAL**

13 PLEASE TAKE NOTICE that Plaintiff, JOSIE HATUEY, demands a jury
14 trial in this case.
15

16 Respectfully submitted,

17 Dated: December 16, 2016

18 /s/ Craig Thor Kimmel
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